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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,048	07/10/2001	Michael Lee Vatter	8163	7755
27752	7590	12/23/2005	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			WANG, SHENGJUN	
ART UNIT		PAPER NUMBER		
1617				
DATE MAILED: 12/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/902,048	VATTER, MICHAEL LEE
	Examiner Shengjun Wang	Art Unit 1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 October 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-6 and 8-12 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6,8-12 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Receipt of applicants' remarks submitted October 3, 2005 is acknowledged.

Claim Rejections 35 U.S.C. 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulz Jr. et al. (US 5,654,362) in view of Drechsler et al. (US 6,071,503) and in further view of applicants' admission and Fowler et al. (US 5,534,265).

Schulz Jr. et al. teach the silicone elastomer powders herein employed. The elastomer powder are made by crosslinking silicone-containing precursors (see col. 2, lines 1-59). The silicone oils include polymethylsiloxane, also known as dimethicone (see col. 4, lines 28-45). Common ingredients to be used with the elastomers of Schulz include propylene glycol (see col. 5, lines 1-5). Glycol functional siloxane fluids are taught as useful with the elastomeric compositions, (see col. 4, lines 45-55). Schulz Jr. et al. teach that the compositions are useful for various personal and facial cleansers and that they function as color cosmetic removers (see col. 7, lines 41-60). Additionally, Schulz Jr. et al. teach that the compositions are useful as delivery systems for oil and water-soluble substances such as vitamins. Table I includes an emollient (see col. 6, lines 44-67). Further, Schulz Jr. et al. teach composition comprising the elastomers as powder (see column 2, lines 11-21, examples III, col. 7, lines 34-60 and claim 12). The elastomer

as cosmetic ingredient provides a variety of benefit to cosmetic composition. See, particularly, cols 7-8.

Schulz Jr. et al. do not teach expressly method of makeup removal that specifically includes transfer resistant makeup as well as composition that include a substrate as a tissue.

However, Drechsler et al. teach transfer resistant cosmetic compositions. The compositions of Drechsler contain a silicone gum or resin base (see the examples 1 and 2, col. 15, line 20 through col. 16, line 30). Drechsler et al. teach that the compositions may be removed by applying petrolatum or a dimethicone-based cosmetic remover to the skin or lips and rubbing the area gently with a tissue (see col. 15, lines 15-18).

It would have been *prima facie* obvious to one of ordinary skill in the art, at the time the claimed invention was made to incorporate the silicone elastomer disclosed by Schulz into a petrolatum or dimethicone-based cosmetic remover in order to benefit from the removal of transfer resistant makeup as taught by Drechsler. As to the particular amounts the elastomer herein or the viscosity herein claimed, note the optimization of a result effective parameter, e.g., the optimal amounts of a cosmetic ingredient or the viscosity of a cosmetic composition, is considered within the skill of the artisan. See, In re Boesch and Slaney (CCPA) 204 USPQ 215. Further, the employments of old and well-known cosmetic ingredients, such as propylene glycol, polypropylene glycol, or dimethicone copolyol in a personal cleansing composition deems obvious. Applicants admit in the specification that the dimethicone copolyol herein employed is known in the art see page 17, herein. Fowler et al. also disclosed that examples using propylene glycol and dimethicone copolyol in personal cleansing composition. See. Particularly examples 2 and 8. As to the limitation “non-spherical” it is noted that Schulz Jr. et al. do not particularly

require the powder to be spherical. The use of non-spherical would be within the purview of a skilled artisan possessing Schulz's teaching.

Response to the Arguments

Applicants' remarks submitted October 3, 2005 have been fully considered, but are not persuasive.

3. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching, suggestion and motivation are found in the cited references and in the knowledge generally available to one of ordinary skill in the art. Particularly, Shulz teach the silicon elastomer gel herein and its usefulness as cosmetic cleansing agent, particularly for removing color cosmetics. Drechsler et al. teach transfer resistant cosmetic compositions may be removed by applying a dimethicone-based cosmetic remover to the skin or lips and rubbing the area gently with a tissue. Therefore, it would have been obvious to one of ordinary skill in the art to employ the elastomer disclosed by Schulz for removing transition resistant cosmetics.

4. Applicants further contend that the cited references do not teach each and every limitation recited in the claims. The examiner disagrees.

5. As to the particular solvent, it is noted the preferred solvent herein is cyclodimethicone (D4 or D5) (see page 10, lines 3-4 in the specification). Schulz particularly preferred D4

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cyclodimethicone as the swollen agent. See, particularly, example I in column 6, wherein the elastomer was prepared with octamethylcyclotetrasilicone (cyclodimethicone D4) as solvent, with a ratio of elastomer to solvent 1:6. The obtained solid gel was further swollen with cyclodimethicone. Drechsler et al. particularly teach that dimethicone based remover would be useful for removing transfer resistant cosmetics. Therefore, one of ordinary skill in the art would have been motivated to either use the silicone elastomer gel disclosed by Schulz et al., which contains substantial amount of cyclodimethicone, or if necessary, incorporate further amount of cyclodimethicone with the elastomer solid for the removal of transfer resistant cosmetics.

Regarding the limitation "non-spherical" it is noted that applicant did dispute that the elastomer particles disclosed by Schulz may be actually non-spherical. Applicants merely argue that Schulz do not particularly require the elastomer particle be non-spherical. The examiner contend that using non-spherical particles would have been an obvious option since Schulz et al do not have particularly requirement for the shape of the particles, and the particles can only be either spherical or non-spherical.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang whose telephone number is (571) 272-0632. The examiner can normally be reached on Monday to Friday from 7:00 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Shengjun Wang
SHENGJUN WANG
PRIMARY EXAMINER
Primary Examiner
Art Unit 1617